

## FEDERAL LAW – CONTROLLED SUBSTANCE ANALOGUE

**McFadden v. U.S., --- U.S. --- (2015)**

**Decided June 18, 2015**

**FACTS:** In 2011, law enforcement began to investigate a Charlottesville, Virginia, video store for distribution of “bath salts.” McDaniel, the owner, had been purchasing the drug from McFadden for several months – selling it under several different names and comparing it to cocaine and methamphetamine. They bore labels borrowed from the Controlled Substance Analogue Enforcement Act of 1986 (Analogue Act) that stated the product was “not for human consumption” and did not contain analogues of controlled substances.

Officers made two controlled buys and then enlisted McDaniel into making additional buys. Substances were seized in transit, as well, with McFadden as the sender. Lab testing indicated MDPV and other substances that produce effects similar to controlled substances such as cocaine, methamphetamine and methcathinone.

McFadden was indicted on multiple counts of distribution of controlled substance analogues, as well as conspiracy. At trial, he argued that threat [wu1] he did not know what he was distributing fell under the Analogue Act. He was convicted and appealed. The U.S. Court of the Fourth Circuit affirmed his conviction. McFadden requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** To prove a violation of the Analogue Act, must it be shown that the individual must be proven to have knowingly violated the law?

**HOLDING:** Yes

**DISCUSSION:** The court noted that the federal Analogue Act required such substances, if intended for human consumption, to be treated as Schedule I controlled substance.<sup>1</sup> McFadden argued on the use of the word “knowingly” under the controlled substances distribution laws and agreed that it must be applied not just to the verb (distributing) but to the object of the verb (the controlled substance).

The Court agreed that the “knowledge requirement may be met by showing that the defendant knew he possessed a substance listed on the schedules, even if he did not know which substance it was.” It could also be shown by the defendant knowing what the substance is, even if he doesn’t know it is in fact a controlled/scheduled drug. The Analogue Act serves to extend the CSA to “analogous substances,” and provides specific definitions for such substances.

The Fourth Circuit did not follow the statutory requirement to treat an analogue as a controlled substance and as such, it did not address the mental-state requirement (knowingly). Instead, it focused only on the Analogue Act’s requirement that the substance be “intended for human consumption.” The Court looked at the competing arguments as to whether the instructions given were proper and agreed that the jury instructions “did not fully convey the mental state required by the Analogue Act.”

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<sup>1</sup> 21 U.S.C. 813.

The Court vacated McFadden's conviction and remanded the case.

**FULL TEXT OF OPINION:** [http://www.supremecourt.gov/opinions/14pdf/14-378\\_k537.pdf](http://www.supremecourt.gov/opinions/14pdf/14-378_k537.pdf)